IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 21ST DECEMBER 2006 / 30TH AGRAHAYANA 1928

Crl.MC.No. 3272 of 2006()

CC.132/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, PERINTHALMANNA

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PETITIONER: ACCUSED:

SURESH KUMAR, S/O. CHARU,
PUTHILLAN HOUSE, WANDOOR, NILAMBUR,
MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: STATE & COMPLAINANT:

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1. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31.

2. NADUVEETIL BHASKARAN, S/O.APPUKUTTAN,
VADAKKANKARA, WANDOOR, MALAPPURAM DISTRICT.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED
SRI.ALIAS M.CHERIAN
SRI.N.RAGHUNATH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 21/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3272 of 2006

Dated this the 21st day of December 2006

O R D E R

The petitioner is the sixth accused in a prosecution interalia under Sections 324 and 506(i) read with 149 I.P.C. All the co-accused that is accused 1 to 5 and 7 to 11 have by now been found not guilty and acquitted of all the charges levelled against him - some of them by the trial court, others by the appellate court, as per Annexure B and C judgments. The petitioner was not available for trial and the case against him was split up. Proceedings are continuing against the petitioner alone. It is, in these circumstances, that the petitioner has come to this court with a prayer that the proceedings against him may be quashed.

2. Conscious of the dictum in Moosa vs. Sub Inspector of Police [2006(1) KLT 552 (FB)] the learned counsel for the petitioner submits that the petitioner is not primarily placing reliance on the acquittal of the co-accused or any observations in the judgments. The learned counsel for the petitioner submits that the petitioner is bound to succeed on the inherent strength of his own case. The learned counsel for the petitioner submits that even if the complaint and the statements were gone through in detail, there is no semblance of a specific allegation against the petitioner. No overt act is attributed to

him at all. There is nothing specifically available to show that the petitioner had shared any common object with the other co-accused who has already been acquitted by the court below. The only allegation against the petitioner that appears in the complaint is the vague and omnibus statement that all the accused persons were present and had jumped over the wall. Except this, there is no specific allegation whatsoever against the petitioner.

3. The learned counsel for the petitioner further submits that the complainant that is respondent No.2 in this petition had himself filed CMP No.846/2005 before the learned Magistrate with a prayer that he may be permitted to withdraw the complaint under Section 257 Cr.P.C. In as much as it was a warrant trial, the learned Magistrate had dismissed the said petition as per order dated 23/04/2005 in CMP No.846/2005 in C.C.No.132/05, a copy of which is made available for my perusal by the learned counsel for the petitioner.

4. I am satisfied in the facts and circumstances of this case that this prosecution is totally unnecessary and has lost its relevance and significance. In the total absence of any worthwhile specific allegation even, against the petitioner, I am satisfied that there, in fact, is no material to induce the requisite satisfaction that there is

sufficient ground to proceed against the petitioner. The interests of justice, I am satisfied, compellingly warrant that this prosecution deserves to be quashed.

5. In the result, this Criminal Miscellaneous Case is allowed. Proceedings in C.C.No.132/05 before the J.F.C.M-II, Perinthalmanna against the petitioner herein interalia under Section 324 read with 149 I.P.C is hereby quashed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006